

## **II. Remarks**

Reconsideration and allowance of the subject application are respectfully requested.

Applicants have amended Claims 45 and 46 to clarify that the gas channel surface (Claim 45) or the air channel (Claim 46) is disposed at the seat surface. Claim 1 has not been amended and states that at least a portion of the seat surface comprises at least one air channel having an air channel surface.

Claims 1-20 and 45-87 are pending in the application. Claims 1, 45, and 46 are independent.

In Paragraph 11 of the outstanding Official Action, the Examiner rejected Claims 1-12, 14-20, 45-58, 60-78 and 80-87 under 35 U.S.C. §103(a) as being purportedly unpatentable over United States Patent No. 5,597,200 (Gregory, et al. (Gregory)) in view of United States Patent No. 3,644,168 (Bonk, et al. (Bonk)) and United States Patent No. 5,927,817 (Ekman, et al. (Ekman)). This rejection is traversed. Reconsideration is requested in light of the following remarks.

Independent Claim 1 recites a novel combination of structure and/or function whereby a foam seat element comprises an isocyanate-based foam matrix having a seat surface. At least a portion of the seat surface comprises at least one air channel having an air channel surface, the air channel surface being coated with a substantially fluid impermeable material.

Likewise, independent Claim 45 recites a novel combination of structure and/or function whereby a foam vehicle seat portion comprises an isocyanate-based foam matrix having a seat surface. At least one gas channel is disposed in the matrix at the seat

surface and has a gas channel surface. At least a portion of the gas channel surface is coated with a substantially gas impermeable material to retard diffusion of gas through the gas channel surface into the foam matrix.

Furthermore, independent Claim 46 recites a novel combination of structure and/or function whereby a foam vehicle seat element comprises an isocyanate-based foam matrix having a seat surface, at least a portion of the matrix surface being air-permeable.

An air channel is disposed in the matrix surface at the seat surface, and an air channel surface is disposed on at least a portion of the air channel. The air channel surface comprises a substantially air-impermeable material which substantially prevents diffusion of air through the gas channel surface into the foam matrix. An air permeable covering is disposed over the air channel to permit air to flow from the air channel through the covering.

The Examiner relies on Gregory for the teaching of a seat cushion having a surface with air channels in the surface of the interior foam to deliver to the occupant of the seat heated or cooled air which flows through another foam surface that is permeable to air and covers the channels. The Examiner acknowledges that Gregory fails to disclose the foam being isocyanate-based, where the channels formed in the foam being coated with a gas impermeable material to retard the diffusion through the surface of the channel and into the foam, the foam matrix comprising an isocyanate-based foam matrix, the gas impermeable material comprising an elastomeric coating, an impermeable coating with the desired thickness and the fluid impermeable material being produced in situ in a mold used to produce the foam matrix, the foam impermeable material being substantially non-cellular and covering less than the complete seat surface, a trim over at least the surface of

the foam element and a frame element partially embedded in the foam matrix.

The Examiner relies on Bonk for the teaching of a coating that is formed in situ with a homogeneous polyisocyanurate foam having a prescribed thickness and a foam element in the roof of a vehicle. Bonk does not teach or suggest a vehicle seat.

The Examiner appears to rely on Ekman for the teaching of an air channel and a passageway surface and less than the complete surface being coated with a substantially fluid and air impermeable material.

Gregory merely discloses well known seat cushions with air channel therein. However, such air channels allow the air moving in the channel to escape into the foam matrix, preventing the air from reaching all parts of the channels. This is precisely the problem which the subject application cures by coating the channels with an air or gas impermeable material. However, the Examiner proposes to combine Gregory with Bonk (a structural material to be used in place of sheet metal, wood reinforced resin and the like) and Ekman to produce the claimed invention, reasoning that one of ordinary skill in the art would have of recognized that the isocyanate-based foam matrix seat should have high resistance to heat and flame spread. Respectfully, this is classic hindsight reconstruction, using Applicants' disclosure as a guide to combine disparate references. The "motivation" provided is Applicants' own teaching.

To prevent such hindsight reconstruction, the law is clear that a prima facie case of obviousness can be established only by showing some objective teaching in the cited art which would lead an individual of ordinary skill in this art to combine the relevant references. See Ex parte Levengood, 28 USPQ2d 1300, 1302 (Patent Office Board of Appeals 1993). Obviousness cannot be established by combining the teachings of the prior

art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so. The mere fact that the prior art may be modified does not make the modification obvious unless the prior art suggested the desirability of the modification. See ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1578, 221 USPQ 929, 933 (Fed. Cir. 1984). It is impermissible to use the claimed invention as an instruction manual or “template” to piece together the teachings of the prior art so that the claimed invention is rendered obvious. See In re Gorman, 933 F.2d 982, 986, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991).

It is well established that, in order to sustain a rejection under 35 U.S.C. §103, it is the burden of the USPTO to establish a prima facie case of obviousness, In re Reuter, 651 F.2d 751, 210 USPQ 249 (CCPA 1981). In asserting such a case of obviousness, the Examiner must propose some modification of a particular reference or a combination thereof with another reference in order to arrive at the claimed invention. In this regard, the teachings of a single prior art reference or a primary prior art reference (which is combined with one or more secondary prior art references) must be sufficient to justify a conclusion that any proposed modification or combination of references is what one of ordinary skill in the art would have found obvious to do at the time the invention was made, In re Linter, 458 F.2d 1013, 173 U.S.P.Q. 560, 562 (CCPA 1972). Moreover, the Courts have held that there must be some logical reason apparent from the evidence of record that would justify a modification or combination of prior art references, In re Regel, 188 USPQ 132 (CCPA 1975). If there is no such reason, the prima facie case of

obviousness has not been made out, Oscar Mayer Foods Corp. v. Sara Lee Corp., 15 USPQ (2d) 1204, (D.C. Wis., 1990).

Hindsight combination of references is not a valid basis for rejection under 35 U.S.C. §103, In re Adams, 148 U.S.P.Q. 742 (CPPA 1966) and In re Skoll, 187 U.S.P.Q. 481, 484 (CCPA 1975). Further, in Twin Disc Inc. v. United States, 10 Cl. Ct. 713; 231 USPQ 417, 425 (Cl. Ct. 1986), the Court stated:

... it is now clear beyond cavil that it is not permissible to ascertain factually what the inventors did and then view the prior art in such a manner as to select from the random facts of that art only those which may be modified and then utilized to reconstruct the claimed invention.

Citing Orthopedic Equipment Co., Inc. v. United States, 702 F.2d 1005, 1012; 217 USPQ 193, 199 (Fed. Cir. 1983), the Court in Twin Disc further stated that it is incorrect to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit.

Accordingly, Applicants respectfully traverse the obviousness rejections and submit that the pending claims recite combinations of structure and/or function nowhere disclosed or suggested by the cited art.

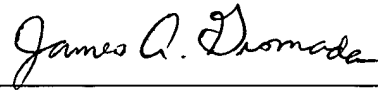
Notwithstanding the foregoing, Applicants wish to state that, even if Gregory, Bonk and Ekman could be combined as proposed by the Examiner one would not arrive at the invention defined by independent Claims 1, 45 or 46. Specifically, the Examiner relies on Ekman as column 5, lines 11-13 for the teaching of provision of a “thin, air impermeable layer position against the porous cushion member”. However, this teaching of Ekman needs to be reviewed in context. Specifically, the portion of Ekman relied on by the Examiner is a claim which states that it is the rear flow channel that further

comprises the air-impermeable layer. Upon a review of the specific teachings in Ekman, it is clear that Ekman does not teach the provision of an air impermeable layer in a channel disposed at the seating surface. See, for example, Ekman at column 4, lines 39-46 wherein it is clearly taught that a rear flow channel is disposed on the underside or backside of the foam pad but not at the seating surface. It is this channel that contains a polyurethane sheet for preventing escape of air from the porous cushion member and for directing air to the bellows 90. Thus, Ekman purposely disposes the air impermeable layer on the underside of the seat cushion for a specific function. There is simply no suggestion in Ekman to dispose such an air impermeable layer on a channel disposed on the seating surface as recited in independent Claims 1, 45 and 46 of the present application. For this reason, Applicants submit that, even if one could combine Gregory, Bonk and Ekman as proposed by the Examiner, the combination of references falls short of the invention defined in independent Claims 1, 45 and 46.

In view of the above amendments and remarks, it is believed that this application is now in condition for allowance, and a Notice thereof is respectfully requested.

Applicants' undersigned attorney may be reached in our Washington, D.C. office by telephone at (202) 625-3633. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

A handwritten signature in cursive script, reading "James A. Gromada".

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